IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

No. 96

THE PEOPLE OF PUERTO RICO,
Petitioner,

vs.

RUBERT HERMANOS, INC., *et al.*,
Respondents.

ORAL ARGUMENT

February 6th and February 9th, 1942

WILLIAM CATTRON RIGBY,
Attorney for Petitioner.

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Attorney General of Puerto Rico,

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Solicitor for the Department of the Interior,
Of Counsel.

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RUBERT HERMANOS, INC., *et al.*,
Respondents.

WASHINGTON, D. C.,
Friday, February 6, 1942.

The above-entitled matter came on for oral argument before the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States, at 4:27 o'clock p.m.

APPEARANCES:

On behalf of the Petitioner,
THE PEOPLE OF PUERTO RICO:
WILLIAM CATTRON RIGBY, ESQ. pp. 2-30

On behalf of the Respondent,
RUBERT HERMANOS, INC., *et al.*:
HENRI BROWN, ESQ. pp. 31-52

PROCEEDINGS

THE CHIEF JUSTICE: No. 96, The People of Puerto Rico against Rubert Hermanos, Incorporated.

THE CLERK: Counsel are present.

Argument of Colonel William Cattron Rigby, on Behalf of the Petitioner, the People of Puerto Rico.

MR. RIGBY: If the Court please, do you desire that we begin, for three minutes?

THE CHIEF JUSTICE: Every minute counts. We cannot afford to miss one.

MR. RIGBY: As this Court is doubtless aware, this is the second hearing in this Court in this same 500-acre case, so-called, from Puerto Rico; in which the first decision was rendered by this Court on March 25, 1940.

In that decision the Court upheld the validity of the acts of the Legislature of Puerto Rico in 1935, Acts Nos. 33 and 47, enacted for the purpose of implementing, as it has been said, the Joint Resolution of the Congress of 1900 forbidding agricultural corporations in Puerto Rico to hold and employ for agricultural purposes more than 500 acres of land, and requiring that restriction to be put into the charter of every corporation chartered in Puerto Rico for agricultural purposes.

The Supreme Court of Puerto Rico had on July 30, 1938, upon the complaint of the People of Puerto Rico, found that this corporation was guilty of violation of that provision put into its own articles of incorporation, holding persistently something over 12,000 acres of land, and had ordered the forfeiture and cancellation of its charter and the imposition of a $3,000 fine and costs.

On the same date on which that judgment was entered by the Supreme Court of Puerto Rico, a motion was made on behalf of the People of Puerto Rico for the appointment of a receiver for the assets of the corporation, on the ground that upon the entry of such a judgment as was framed, as the motion was framed, a receiver should be appointed; and pointing out particularly the provisions of Section 182 of the Code of Civil Procedure of Puerto Rico.

It is in relation to this receivership motion that this case

is here again now. The motion for the receiver was at that time held in abeyance by the Supreme Court of Puerto Rico, awaiting the appeal upon the merits of the case, and after the affirmance, the ultimate affirmance by this Court, the Circuit Court of Appeals having in the meantime reversed the judgment, this Court in turn reversed the Circuit Court of Appeals and affirmed the judgment of the Supreme Court of Puerto Rico.

As soon as the mandate of this Court came down to the Supreme Court of Puerto Rico, the Attorney General immediately, on the same day, called up the motion for the appointment of the receiver which had been held in abeyance and asked the court to set down a day for the hearing of it.

THE CHIEF JUSTICE: We will stop now.

(Whereupon, at 4:30 o'clock p.m., the arguments in the above-entitled cause were recessed until Monday, February 9, 1942, at 12 o'clock noon.)

WASHINGTON, D. C.,
Monday, February 9, 1942.

The oral argument in the above-entitled matter was resumed before the Chief Justice of the United States and the Associate Justices of the United States Supreme Court, at 12:05 o'clock p.m.

APPEARANCES: [SAME]

PROCEEDINGS

THE CHIEF JUSTICE: Proceed with the cause on argument, No. 96, The People of Puerto Rico against Rubert Hermanos, Incorporated.

THE CLERK: Counsel are present.

Argument of Colonel William Cattron Rigby, on Behalf of the Petitioner, the People of Puerto Rico (Resumed):

MR. RIGBY: As I said on Friday, the question presented here on this hearing is of the jurisdiction primarily and the regularity and, in substance, of the jurisdiction of the Insular Supreme Court to appoint the receiver which it appointed in this case, after this Court had affirmed its judgment of July 30, 1938, decreeing a forfeiture of the corporate franchise of this corporation because of its violation of the so-called 500-acre limitation; having held something over 12,000 acres of agricultural land.

Immediately upon the mandate of this Court, upon this Court's judgment of March 25, 1940, having been filed in the Insular Supreme Court, the Attorney General of Puerto Rico renewed the motion or called up the motion which had been made back on July 30, 1938, for the receiver—the same day that the forfeiture decree had been entered and had been held in abeyance without action by the court, pending the determination of the appeal and the certiorari here—and asked that the receiver be appointed.

That motion was made on the ground that, in view of the forfeiture judgment, a receiver should be appointed. And the motion made special reference to Section 182 of the Code of Civil Procedure of Puerto Rico; sub-paragraph 4, for the appointement of a receiver in case of forfeiture of the corporate franchise, and 5, in other cases according to the practices of equity.

The respondent came in—instead of the corporation, Rubert Hermanos, Incorparted, coming in, its former directors came in—claiming to be liquidating trustees under the

corporate dissolution statute of Puerto Rico, and appearing as such, and saying that immediately upon the entry of the judgment of this Court on March 25, 1940, and without waiting for the mandate of this Court to come down they, in accordance with the statute for voluntary dissolution of corporations in Puerto Rico, and claiming that they had the right to act under that statute, had proceeded to carry out voluntary dissolution proceedings of the corporation and as its liquidating trustees had transferred all of its assets to a new agricultural partnership composed of themselves and the stockholders of the corporation, "the former corporation," as they said; had settled all of its debts and had made apparently a universal transfer of the assets subject to all the liabilities to this new partnership composed of the stockholders of the former corporation; that here was the *fait accompli* and there was nothing more for the court to do and it had no jurisdiction to proceed at all; and said also that the provision of Act No. 47 of 1935, providing for an option in case of forfeiture of a charter to the Territory to elect whether to condemn the property or to have it sold at public auction, was invalid, or at any rate could not be applicable here because the thing was done, and that in any event the final judgment of the court of July 30, 1938, that had been affirmed by this Court, ended the proceeding; and, therefore, also, the court was without further jurisdiction to proceed in any manner.

The Attorney General answered in his brief that in view of the provision of Section 182 of the Code of Civil Procedure, providing for a receiver in case of forfeiture of the charter, the provisions under which they attempted to act for voluntary dissolution were not applicable, and their proceedings were simply void and had not had any effect; insisted on the validity of the option; and answered another objection that they had made that it was *ex post facto* because they had had their land for a time before

the Act of 1935 was passed, replying it was not *ex post facto*, because, after the Act, they had not attempted to dispose of the lands at all but had indicated the intention to go right ahead just the same as they always had and had insisted simply on the invalidity of the Act; and so there was nothing *ex post facto* in the application thereof.

The Insular Supreme Court upheld entirely the position of the Attorney General; appointed the receiver; held that the application of the Act was not *ex post facto;* upheld the validity of the portion of the Act providing for the option; held that the option ran for six months after the final decision by this Court, that is, instead of their being compelled to complete the action under it within six months, as counsel was contending, that the People had six months within which to arrive at their decision, as to whether they would condemn or would elect to sell at public auction; and held that the voluntary dissolution statute did not apply to proceedings where there had been a forfeiture by decree of the court for violation of the statute. As I say, the court appointed the receiver and directed the receiver to take charge of all of the property, and to proceed with the usual powers of a receiver, to continue the operation and where necessary to incur debts for the purpose of operation, pending the decision of the Attorney General or of the People of Puerto Rico as to what election they would make under their option.

THE CHIEF JUSTICE: And assuming that the state or the government had six months in which to condemn, they could still do it despite dissolution; could they not?

MR. RIGBY: That was, of course, our position, the position of the Attorney General.

THE CHIEF JUSTICE: And of course a receivership was not necessary in order to carry out the condemnation proceeding, was it?

MR. RIGBY: Perhaps not, but the Supreme Court did think so; and we think it was very valuable and the right

thing to do, because respondents, in assuming that they had the power to go ahead, as they assumed, they could transfer all of the property to third parties and encumber the title in that way, and it would make it almost impossible to get any reasonable price on the sale of the property in case the People elected, as they did before the six months was up, to sell at public auction. Because it was manifest that you could not expect a purchaser to gamble.

THE CHIEF JUSTICE: In the event of a sale at public auction or condemnation, isn't that an incident to the condemnation?

MR. RIGBY: It would be. It would require a new set-up. It would require a great deal more machinery.

THE CHIEF JUSTICE: Whose were the proceeds?

MR. RIGBY: After the determination, the proceeds should go, presumably, of course, to the stockholders; after the thing had been wound up.

MR. JUSTICE ROBERTS: If there was an injunction against the trustees, from making the sale until the state had exercised its option, that was all the relief you needed?

MR. RIGBY: But, you see, they had really gone ahead and really abrogated their trust and made the sale before the mandate of this Court could possibly come down. They proceeded immediately just to sell to themselves, which changed their position as trustees.

THE CHIEF JUSTICE: Assuming you would still have the right to condemn and sell, the only sufferers from a low price would be the stockholders?

MR. RIGBY: Possibly; but also the People, because the whole plan of carrying out the separation of the property into small parcels and being able to sell it in a reasonable way and with reasonable promptitude, might very easily be seriously impaired. And the statute provided, of course, that it should be in the same proceeding and not in some other proceeding. That was one of the things that was at issue, and the court held, as I say,

that they could not go ahead, and the Circuit Court of Appeals upheld that, in that the determination that the forfeiture should be had,—in the decree of 1938, affirmed by this Court,—did not end the proceeding; but it was still pending for the purpose of carrying out these further provisions of the statute; and it was very proper, therefore, in that proceeding, to give a complete relief; and that they had jurisdiction to do it and it the wise thing to do under the circumstances.

The objection was made, and was made in the Circuit Court of Appeals and the Circuit Court of Appeals in its opinion dwells on that, that the receivership was broader than might have been necessary, because the option is only on the real estate. The Circuit Court of Appeals says on the "excess real estate," though we do not quite understand it that way. But counsel themselves in their briefs, there and here, have dwelt on the fact that this is a going concern and how important it is that it be not interfered with, the business be not interfered with, or anything of that kind.

The same thing applies, we submit, primarily in considering the receivership; it would have broken up the business then and would have injured everybody concerned to have given the receivers only—

THE CHIEF JUSTICE: I suppose there were liquidation proceedings in this case, on dissolution, and the statutory authority would be to carry on this business; isn't that correct?

MR. RIGBY: These directors came in, claiming to be liquidating trustees. They claimed that they had the power under the statute to proceed as they did, and in voluntary dissolution under the statute to make themselves liquidating trustees and to go ahead. And perhaps if they had gone ahead in that way and had not undertaken to sell to themselves immediately and take the thing out from under the jurisdiction of the court, the court might have been

content to appoint them as receivers. But instead of going ahead and doing that in the regular way, they instantly sold everything, lock, stock and barrel, subject to all the debts, to themselves, to the new partnership composed of their own stockholders.

MR. JUSTICE FRANKFURTER: Are you suggesting that these so-called liquidating trustees acted adversely to the interest sought to be enforced?

MR. RIGBY: Certainly they did; certainly they did. They did what they could do, apparently, to cut off or encumber the enforcement of the option.

MR. JUSTICE FRANKFURTER: Is the Puerto Rican statute clear as to the status of these liquidating directors as equivalents of receivers?

MR. RIGBY: We think it is, and contrary to their position.

MR. JUSTICE FRANKFURTER: You think it is clear directly opposite to the clarity that the Circuit Court of Appeals found?

MR. RIGBY: Precisely. The Supreme Court of Puerto Rico held that the statute relating to voluntary dissolution does not apply to the case of a forfeiture by decree of court of a corporate franchise, at all; that it has nothing to do with that. We believe that they are perfectly right in that, and we point out the reasonableness of that in our brief.

MR. JUSTICE FRANKFURTER: Is there any other law except this statute and the construction of the Supreme Court in this case?

MR. RIGBY: There are two statutes to be considered. The Supreme Court of Puerto Rico took the same position that the Court of Texas took in the San Antonio Gas case* as to the construction of the statute.

MR. JUSTICE FRANKFURTER: Did the Puerto Rican statute derive from the Texas statute?

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* San Antonio Gas Co. vs. State, 22 Texas Civ. App. 118; 54 S. W., 289, 293, 294.

MR. RIGBY: No; it is derived from California, but with a very marked and very significant difference, and that is the thing that to our mind is conclusive, because the Circuit Court of Appeals followed the decision of the California Supreme Court in the Havemeyer case and apparently there ignored the difference and, as we think, the difference deliberately made by the Legislature of Puerto Rico.

MR. JUSTICE FRANKFURTER: Would it be convenient to your argument to state those differences?

MR. RIGBY: Yes; I would like to, right now.

In the first place, the California statute I have cited on page 4 of my reply brief but, with the permission of the Court, I want to read the whole statute a little more at length than I have stated it there. It is Section 564 of Deering's Codes of 1931 of the Civil Code of California.

MR. JUSTICE FRANKFURTER: Would you be good enough to give that citation again? It does not seem to correspond to the one I have located.

MR. RIGBY: It is cited on pages 8 and 9; I am sorry.

The one I will now call to the Court's attention and read first, however, is the one cited on page 4 of my brief. That is Section 399 of Deering's Civil Code. The other was the Code of Civil Procedure. I am now quoting from the Civil Code, Section 399, that is as to the winding up, the dissolution of corporations. Section 399 reads:

> "All corporations, whether they expire by their own limitation, by forfeiture of existence by order of court, or are otherwise dissolved, shall nevertheless continue to exist."

Now, the Legislature of Puerto Rico, in following that statute in enacting Section 27 of its corporation law, omitted that clause about forfeiture of existence by order of court; so as to make the Puerto Rico statute read—and we have quoted it at length on page 41 of the appendix to our petition for certiorari:

"Section 27. Corporate existence pending dissolution. All corporations, whether they expire through the limitation contained in the articles of incorporation, or are annulled by the legislature, or otherwise dissolved, shall continue."

You see, they omitted the clause about forfeiture by order of court.

MR. JUSTICE FRANKFURTER: Would you say there is anything in the suggestion that annulment by the Legislature means they are dissolved by the Legislature by that annulment?

MR. RIGBY: That might be, except for the other phraseology in the statute. In the first place, if I may look at just another angle for a moment, the Legislature of Puerto Rico puts ahead of that Section 27, Section 26 which defines what a dissolution is; and there is no such provision at all in the California statute. Section 26 deals with voluntary dissolution, and that is the "dissolution" as they call it, apparently.

Then if I may refer to the decision of this Court in the Talbot case* against the Territory of Montana where this Court held that in the banking statute, the National Banking Act of 1864, all of the sections of it refer to territories as well as to states, because in the initial section of the statute the word "territory", as well as "state", is used. And this Court went on and laid down the rule which is of course well-established, that where in the initial section of a statute a word has been used with a certain definition and clear meaning it is not necessary in the following sections of the statute always to repeat that you mean to use it with that meaning.

So here the Legislature of Puerto Rico in the initial section of Chapter VI of this Act, Section 26 as it is re-

* Talbot vs. Silver Bow County, 139 U. S., 438, 443-444.

printed here, had spoken of dissolution as denoting voluntary dissolution.

THE CHIEF JUSTICE: Well, but does not Section 27 cover other dissolutions than voluntary dissolutions?

MR. RIGBY: It covers the other two classes, but not this class.

THE CHIEF JUSTICE: Annulled by the Legislature?

MR. RIGBY: It covers that specifically.

THE CHIEF JUSTICE: "Or otherwise dissolved"?

MR. RIGBY: Whether they expire, first, through limitation of the articles of incorporation, through time; that is one thing. Two, where they are annulled by the Legislature; that is the second class.

THE CHIEF JUSTICE: And then, third?

MR. RIGBY: Third, "otherwise dissolved," which we think plainly refers back to being dissolved in accordance with Section 26. And that is carried out by the fact that they significantly omit the provision which was in the California statute that they were following, as I read it, which provided in case of forfeiture specifically; and then they put into Section 182 of the Code of Civil Procedure the express provision giving the court power to appoint a receiver in case of dissolution on forfeiture of the corporate charter.

MR. JUSTICE FRANKFURTER: As I follow your argument, it appears in connection with "otherwise dissolved" that "dissolved" means what Section 26 defines.

MR. RIGBY: Precisely.

MR. JUSTICE FRANKFURTER: But that leaves, as the Chief Justice has just suggested, the termination through the limitation of time, the limitation of the articles of incorporation; that kind of termination is out of the picture. At least, that is not in this?

MR. RIGBY: That is not in this; no.

MR. JUSTICE FRANKFURTER: Or by annulment of

the Legislature—now, what do you say as to the scope of that category of dissolution?

MR. RIGBY: That is where by act of the Legislature, general act of the Legislature or a special act if there had been reserved the power, the Legislature had ordered the corporation dissolved.

MR. JUSTICE FRANKFURTER: You mean annulled by the Legislature, and meaning only by the Legislature and not any agency of it?

MR. RIGBY: Specifically what the language says, apparently. Now, the widening of that, to mean an act by the court forfeiting it pursuant to an act of the Legislature, is apparently excluded, because of the fact that, as they had that phraseology before them in the California model that they were following, they purposely omitted it.

MR. JUSTICE FRANKFURTER: They left that out, but stuck something else in?

MR. RIGBY: No; but they say in the California model which they had—

MR. JUSTICE FRANKFURTER: It is not on page 4.

MR. RIGBY: The California model—no; that is right. They stuck in in place of it "or are annulled by act of the Legislature". But apparently they do not mean that to include forfeiture by order of the court, because specifically in Section 182 of the Code of Civil Procedure, when they are defining the cases where the court has power to appoint a receiver, they specifically transfer over there this provision about forfeiture by order of the court.

MR. JUSTICE REED: Now, where is that 182?

MR. RIGBY: Now, just a moment—

MR. JUSTICE FRANKFURTER: Page 46 of the petition.

MR. RIGBY: Yes; page 46. "A receiver may be appointed"—

MR. JUSTICE REED: Yes; I have it.

MR. RIGBY: (continuing)—"by the court in which an

action is pending or has passed to judgment, or by the judge thereof"—1, 2, 3 and then 4: "In the case when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights."

Evidently they have that in mind as a specific category, you see. And this Act was adopted, I may say, in 1902, in the same year and the same month in which the corporation Act was adopted.

MR. JUSTICE FRANKFURTER: Now I notice on that page, in connection with Section 182, I notice parenthetically the reference to Section 564 of the California Code.

MR. RIGBY: Yes.

MR. JUSTICE FRANKFURTER: Is that the source of Section 182 for Puerto Rico?

MR. RIGBY: The source of Section 182 for Puerto Rico is the California statute.

MR. JUSTICE FRANKFURTER: Apparently California authorized the appointment of a receiver there, and the question of forfeiture by court action is in other places in the California Code.

MR. RIGBY: Yes; but there is another significance to that, in that the California statute provides only while the case is pending and before it is passed to judgment.

The California statute, Section 564—and that is the one I was about to read a moment ago, first; and I have it here in full, and that is cited on pages 8 to 9 of our brief—reads this way:

THE CHIEF JUSTICE: Is that printed?

MR. RIGBY: That is printed, Your Honor. We call attention to that on pages 8 to 9 of our reply brief. The very significant thing there is that the Legislature of Puerto Rico in following that statute put in the clause "or has passed to judgment" in the caption, the first clause of the statute; so that, whereas the California statute read, "A receiver may be appointed by the court in which an action

is pending or by the judge thereof under these circumstances," the Puerto Rico statute reads, as printed on page 46: "A receiver may be appointed by the court in which an action is pending *or has passed to judgment*, or by the judge thereof."

Making all the difference in the world, you see. And putting those statutes together, it seems perfectly plain that was the intention of the Legislature of Puerto Rico, to transfer this provision as to where it has forfeited its corporate rights from the category of the ordinary dissolution statute where the directors might proceed as liquidating trustees, and to transfer it into the category where they gave the court which had ordered the forfeiture a continuing power, even after the proceeding had passed to judgment, to appoint a receiver in such case of forfeiture of corporate rights.

Now, it seems perfectly easy to us to see why the Legislature may have decided that they wanted to do that; because, after all, where there has been such a violation of the law by the management of a corporation that it is determined necessary by the court to forfeit their corporate rights because of the violation, there may be good reason for saying that they should not have the same right to go ahead, of course, and appoint themselves as liquidating trustees to wind it up, that they would have in the ordinary dissolution case.

MR. JUSTICE FRANKFURTER: What has Judge Magruder to say with reference to the history as you see it in regard to Section 182, and the general provisions in Section 27 and the other sections?

MR. RIGBY: He just simply said the general—I will read you the language; he did not go into the other provisions at all.

MR. JUSTICE FRANKFURTER: Was that history ever before the Circuit Court of Appeals?

MR. RIGBY: Not as fully as we put it here.

MR. JUSTICE FRANKFURTER: What was left out?

MR. RIGBY: Well, the careful analysis that we have tried to make in our brief here, I confess was not made

there. You see, it came up there and we were the appellee, and we simply called the attention of the court to the judgment of the Supreme Court of Puerto Rico and rested on its opinion, without going into the analysis of it which we have made here.

THE CHIEF JUSTICE: Where is 182 printed in full.

MR. RIGBY: 182 is printed in full on pages 46 to 47 of the appendix to our petition for certiorari.

MR. JUSTICE FRANKFURTER: In this case, while we have the Puerto Rican Legislature and the judgment of the Supreme Court of Puerto Rico, we are not embarrassed by any consideration that we are dealing here with matters that are derived from a conflict in Spanish law or Spanish text? This is all a matter of the Puerto Rican statute as derived from the California statute?

MR. RIGBY: That is true. The only thing here is that this is a construction by the Supreme Court of the Territory of the territorial statutes; and nothing specifically because it came from Spain.

MR. JUSTICE FRANKFURTER: When did this get into the Civil Code?

MR. RIGBY: In 1902*; both of them.

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* A mistake as to the dates. *The Corporation Law*, in fact, antedated the Code of Civil Procedure, by two years. The Corporation Law, in 1902, appears in the "Revised Statutes and Codes of Porto Rico", 1902, in *"Title II. Regarding Corporations"*, as *"Chapter I"* of that Title, *"Domestic Corporations"*, Sections 32-92, inclusive. The present "Article VI; *Dissolution*", Sections 26-38, inclusive, appears in that 1902 Code in almost identical form, under the same caption, "Article VI. Dissolution", as Sections 58-60, inclusive, on pages 775 to 779 of the 1902 Code.

The Code of Civil Procedure of Puerto Rico, containing Article 182 in the same form as it now appears (*Appendix to our Petition for Certiorari*, pp. 46-47) was originally approved on March 10, 1904. (*Compilation of Revised Statutes and Codes of Puerto Rico*, 1911, pp. 813, 838).

It follows, therefore, that if the difference in the dates of original enactment of these two statutes makes any difference here whatsoever, *then it is the Code of Civil Procedure*,—and this Article 182 of that Code,—that is the later expression of the legislative will, rather than the Corporation statute.

MR. JUSTICE FRANKFURTER: Has it been unchanged since then, since 1902 as it was in the original code?

MR. RIGBY: In the original code of 1902. It has been re-enacted, but it has never been changed. Now, counsel say that the Corporation Law was enacted in 1911, and should therefore be given the weight of being the last expression of the legislative will; but if counsel will look at the statutes again he will see, I think, that he is clearly mistaken in that line. The Corporation Law was enacted in 1902, and was simply re-enacted in 1911, with no change in this respect.

MR. JUSTICE FRANKFURTER: When the two statutes got into the law, as you have stated, is there a contradiction between Section 182 and its various articles, and the corporation law?

MR. RIGBY: We do not think so. Of course, counsel maintains that there is.

MR. JUSTICE FRANKFURTER: Do you mind stating what that is?

MR. RIGBY: They claim as to Section 27 that in the reading of it it is conclusive, and that is all. Our argument is—and that was the argument of the Insular Supreme Court, and we think they were right—that that section, in view of Section 26, is limited simply to voluntary dissolutions.

In other words, Section 27 talks about three of the four classes; it talks about expiration by limitation of time, which is one class; it talks about annulment by the Legislature, which is a second class, and it talks about dissolution, that is to say the ordinary voluntary dissolution, which is a third class; and that the fourth class of forfeiture of corporate rights by an act of the court is the action that is dealt with in Section 182, and the Legislature of Puerto Rico has clearly intended to make that a different class and to take it out of the class covered by the voluntary dissolution. And for that reason did not follow the model which they were in a general way following, of

the California statute; but changed both the corporation law as to dissolution on the one hand, and changed the caption of the Code of Civil Procedure on the other hand, so as specifically to give this power to the court after the case had passed to judgment.

MR. JUSTICE FRANKFURTER: Have you got the dates readily in mind of the passage of the Civil Code of 1902, and also the date of the act establishing the private corporations of Puerto Rico?

MR. RIGBY: Both were in 1902, as I say; both approved March 1, 1902.

MR. JUSTICE FRANKFURTER: So they were contemporaneous enactments?

MR. RIGBY: They were contemporaneous enactments. And the re-enactment of the Corporation Act in 1911, with the small changes that were made, we think is clearly within the doctrine of this Court in the rule established, for example, in the case of Posadas, the Collector of the Philippine Islands, against the National City Bank, (296 U. S. 497, 503-506), where this Court pointed out that a re-enactment of that kind—page 503; that was 296 U. S., 497; I think I should add it to my brief, if I may—this Court said at page 503, that "as a general thing a later act is to be construed as a continuation of, and not a substitute for, the first act and will continue to speak, so far as the two acts are the same, from the time of the first enactment."

THE CHIEF JUSTICE: That is the Posadas case?

MR. RIGBY: That is the Posadas case; P o s a d a s; Posadas, Collector of Internal Revenue of the Philippine Islands against the National City Bank of New York, 296 U. S., syllabus at page 497. I am quoting from page 503.

MR. JUSTICE REED: Colonel, could you help me on that Section 182, sub-section 4. Now, that speaks of the class "or has forfeited its corporate rights".

MR. RIGBY: Yes.

MR. JUSTICE REED: Which I understand is the particular class you are arguing on.

MR. RIGBY: Precisely.

MR. JUSTICE REED: Now, what is the act; is it No. 47 that says that on holding land of more than 500 acres there may be a forfeiture of the corporate rights?

MR. RIGBY: That is Act No. 47 of 1935.

MR. JUSTICE REED: Now, that is printed on page 44 of your petition, I believe?

MR. RIGBY: Yes.

MR. JUSTICE REED: Now, what part of that forfeits the corporate rights?

MR. RIGBY: Then there is also the provision in the last part—that runs over onto page 45; Section 6, page 45, "and when the decree of nullity affects"—

MR. JUSTICE REED: That gets into the Code, doesn't it?

MR. RIGBY: No; just above that, the last part.

MR. JUSTICE REED: I see.

MR. RIGBY: The last clause of Act No. 47, just above the Code of Civil Procedure.

MR. JUSTICE REED: Yes; I see. Now, what is the point?

MR. RIGBY: "when the decree of nullity affects real property and The People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property. For these purposes, the just value of the property subject to alienation or confiscation shall be fixed in the same manner as it is fixed in cases of condemnation proceedings."

Then the option goes back in Section 2; that is, at the end of Section 2 the option is, back on page 44. The paragraph begins:

"When any corporation by itself or through any other subsidiary or affiliated entity or agent is unlaw-

fully holding, under any title, real estate in Puerto Rico, the People of Puerto Rico may, at its option, through the same proceedings"—

That is, dealing with the forfeiture proceedings, that the first paragraph of the section is providing for—

"—through the same proceedings, institute in its behalf the confiscation of such property, or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final sentence is rendered."

MR. JUSTICE REED: Now, let me see if I understand that. The clause as to the forfeiture of the corporate rights, you consider as the important clause. And you read Section 2, which gives you the right to proceed against the corporation for forfeiture, as though the first paragraph of Section 2 was to be read into the second paragraph; so that not only you confiscate the land, but you forfeit the corporate rights of the corporation.

MR. RIGBY: The first thing we do is to forfeit the corporate rights. That was the thing that was upheld by this Court in its former decision, and what was done in the judgment of July 30, 1938.

MR. JUSTICE REED: So taking the land and forfeiting the corporate rights, is that the way you construe that in connection with confiscating the property?

MR. RIGBY: "Confiscate" should read, in what I read and then the next paragraph and also in Section 6, "confiscate" really means to dispose of, you see, for a reasonable price.

MR. JUSTICE REED: Yes.

MR. RIGBY: So that in the same proceedings in which the judgment of forfeiture was entered, that is this proceeding which was under Section 2, this gives the People of Puerto Rico the right to ask the Supreme Court of

Puerto Rico in the same proceedings to proceed to execute whatever is necessary to carry out the determination of the option, which they did determine a little after this receivership was instituted. They advised the court, and it is in the record here, that their election is to sell the property at public auction in this same proceeding, now.

MR. JUSTICE REED: What becomes of the corporation in such a proceeding?

MR. RIGBY: Well, of course, the corporation is just dead. That is, the decree of the Supreme Court of Puerto Rico, affirmed by this Court, which would completely wipe out the corporation. It forfeited its corporate franchise, so that it is simply dead as a corporation. And the only thing left is to determine what is the right way to proceed to wind up its assets and to dispose of them. And our position is, as the Supreme Court of Puerto Rico held, that it is its right and its duty under that provision of the Code of Civil Procedure to appoint a receiver and to proceed in that manner to wind up the corporation; so we make the necessary orders to carry out the option, which the—

THE CHIEF JUSTICE: Well, you see, without the appointment of a receiver you say there was no person authorized to do anything with this property or dispose of it or wind it up.

MR. RIGBY: Precisely; precisely. That is the only way.

THE CHIEF JUSTICE: That is a necessary part of your argument?

MR. RIGBY: I don't know that it is really necessary to the argument, because Section 5 of this same paragraph, Section 5 of this same 182 provides a power in the court to appoint a receiver in other cases in accordance with the usual practices of equity.

THE CHIEF JUSTICE: It still would be necessary to have a receiver, somehow?

MR. RIGBY: I beg pardon?

THE CHIEF JUSTICE: In your view it still would be necessary to have a receiver appointed in this proceeding, or in some other?

MR. RIGBY: Yes; precisely, in order to carry it out.

MR. JUSTICE FRANKFURTER: I am not sure whether you answered that the way I understood it. Do you deny that the Puerto Rican court could in its discretion have appointed these liquidating directors of the extinguished corporation?

MR. RIGBY: No. On the contrary, I think I said they would have had discretion to do so.

MR. JUSTICE FRANKFURTER: I don't mean as persons; I mean, instead of taking the entity, if they were taken as individuals, as the court would have been empowered to do; that these directors who were the liquidating officials, the liquidating trustees, in the interest of the corporation itself would also be deemed to be the receivers for the court, that they could do that for the purpose of enforcing the 500-acre law.

MR. RIGBY: I see no reason why those individuals could not have been appointed by the court, just the same as anyone else. And, as I say, if they had not attempted to take advantage of their trust duties to grab the whole thing for themselves, the court might have decided that was the best thing to do.

THE CHIEF JUSTICE: What do you mean by "trust duties"? What were they in this thing?

MR. RIGBY: As we see it, they had none, but they assumed they had.

THE CHIEF JUSTICE: You come back to the point that unless a receiver was appointed there was no person who could do anything in the corporation, and that includes not only as to the land but their personal property.

MR. RIGBY: Everything, as we see it. Now, I am simply saying as to the matter—

THE CHIEF JUSTICE: Although you do not contend there is any right to confiscate personal property, do you?

MR. RIGBY: No; of course not. But there had to be some way—

THE CHIEF JUSTICE: You had to do that, in the event of the dissolution of this character, with no one to look after the personal property, because the state had no jurisdiction.

MR. RIGBY: That is true. There had to be some way of disposing of it. Now, as I say, on the matter of discretion—

MR. JUSTICE JACKSON: Could the court prevent that? The directors could not sell to prevent a public sale; but the man you would appoint as a receiver would have to operate this property for an indefinite time and handle the money and generally to take the place of the offending corporation owning 12,000 acres of land.

MR. RIGBY: Of course, as we see it, they did not quite get the point of the order, at all. The order contemplates to hold it only until it was possible to carry out the option. Now, of course, that receivership order was made before the election had been given to the court as to how the option should be carried out. It was a matter of holding it in status quo and keeping it operating until their further order.

MR. JUSTICE JACKSON: In other words, there might have been problems arising requiring the handling of money, and that was substantially your purpose?

MR. RIGBY: Exactly, and that was, as we understand, the purpose.

MR. JUSTICE JACKSON: To effectuate it.

MR. RIGBY: To effectuate it.

MR. JUSTICE JACKSON: You did not require any receiver to borrow money or handle personal business?

MR. RIGBY: Except insofar as in operating a going business of that sort you have to have some way of getting

the money to pay debts and things of that sort as they come up. Now, you take over a going property there.

MR. JUSTICE JACKSON: You do not propose to sell it, as a rule, if you take it over? You wind it up.

MR. RIGBY: But before they can determine how to wind it up at auction or determine to sell it in the best way, they have to run it long enough to go through with the necessary machinery and make the arrangements. They cannot just stop. Counsel themselves call attention in their brief that you cannot stop for a day and cannot shut down the machinery; if you do, you lose money and it deteriorates.

THE CHIEF JUSTICE: Could you sell the personal property?

MR. RIGBY: If you sell the personal property there would be a considerable amount—

THE CHIEF JUSTICE: I say, could you? Is there any authority in this proceeding to sell the personal property?

MR. RIGBY: Except as the receiver might dispose of it, liquidate and dispose of it.

THE CHIEF JUSTICE: Well, does the receiver have authority to, in order to carry out the judgment, in your view, if the judgment calls merely for distribution or disposition of the realty?

MR. RIGBY: I don't see why he is not the receiver for all the purposes that a court of equity may appoint a receiver for.

THE CHIEF JUSTICE: If he is merely the receiver to carry out this decree? What has this decree to do with personal property?

MR. RIGBY: He is the receiver appointed by the court under Section 182, as we understand it.

MR. JUSTICE FRANKFURTER: The question was whether that is a valid appointment; that is the initial question.

MR. RIGBY: That is different; but assuming that that

is a valid appointment, he has all the powers of any receiver.

THE CHIEF JUSTICE: I am looking, really, for a little different consideration. You say there is no authority in the case of a corporation dissolved as this one was to deal with its affairs at all.

MR. RIGBY: There is no authority in the former directors of the corporation.

THE CHIEF JUSTICE: That is, to no one else except who is a receiver?

MR. RIGBY: Yes.

THE CHIEF JUSTICE: But you say the authority for the appointment of the receiver is to carry into effect this decree.

MR. RIGBY: No; not necessarily and altogether alone, at all.

MR. JUSTICE FRANKFURTER: May I ask this question?

MR. RIGBY: Certainly.

MR. JUSTICE FRANKFURTER: Directing your attention to the order on page 127, will you be good enough to look at the order in the first paragraph conferring authority and powers upon the receiver appointed or designated, and he is designated in the second paragraph, "To take and maintain possession of all the properties and especially of the lands which in violation of the law were possessed by the corporation."

Now, if I may merely rephrase the question, as I understood it, of the Chief Justice; what is ordered and what can be forfeited is merely land; is that correct?

MR. RIGBY: We understand that; yes. That is, including the mill and all, that that is real property under the Spanish law.

MR. JUSTICE FRANKFURTER: Now, evidently there are properties other than that?

MR. RIGBY: Of course.

MR. JUSTICE FRANKFURTER: Therefore the question is, 1, whether under these circumstances the court could appoint a receiver to hold and take over the lands which were forfeited? That is one question. The second question is, assuming the court can do that, may the receiver be put in charge of the whole enterprise?

MR. RIGBY: As we see it, in order to determine that you have to look at the enterprise as it was.

THE CHIEF JUSTICE: No; you have to look at the statutes first, I think.

MR. RIGBY: Yes; and the statute—

THE CHIEF JUSTICE: Now, where do you find the statutory authority to appoint a receiver, even though you assume that it is proper to appoint a receiver to carry out this decree, where do you find the statutory authority to appoint a receiver for the personal property of this corporation? Unless—

MR. RIGBY: In that connection, this paragraph 4, subparagraph 4 of Section 182 of this Code of Civil Procedure; paragraph 4 on page 46.

THE CHIEF JUSTICE: 46?

MR. RIGBY: Of our brief.

> "In the case when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights."

And 5, on the next page:

> "In all other cases where receivers have heretofore been appointed by the usages of courts of equity."

Now, here is a corporation that has been dissolved, has forfeited its corporate rights. There is nobody authorized to take care of that property.

MR. JUSTICE FRANKFURTER: Well, may I interrupt you there? I do not quite follow that. It brings up the question asked by the Chief Justice a little while ago, that no trustee has any trust duty. Didn't they have a trust duty with reference to the non-forfeitable assets of this

corporation, and are not the stockholders entitled to liquidate the value of those properties?

MR. RIGBY: We do not so understand it. Of course it goes back to the old common law, it is in the state.

MR. JUSTICE FRANKFURTER: The state did not get it by virtue of a petition?

MR. RIGBY: No.

MR. JUSTICE FRANKFURTER: Does it get it by virtue of escheat?

MR. RIGBY: Not escheat, exactly. But you have a situation where we have property with no one authorized to take charge of it. Of course, in the absence of statute there is no one authorized to go ahead and care for the property of the corporation.

The statutes enacted in all of the States provided in different ways for some methods of caring for the property of a dead corporation, so as to avoid the escheat that was in the common law. As we read it, the methods provided by the Legislature of Puerto Rico are different in the different classes. They provide for liquidating trustees in *three* of the classes; namely, the expiration of the charter by time, the annulment by legislative act or the voluntary dissolution; and there a trust duty is placed upon the former directors and they become liquidating trustees. Of course they may be displaced by a receiver appointed by the court in a proper action if they are abdicating their duties or not performing their duties in the right way. And that receiver thus appointed would have all the powers that they had over not only some property the state might have some special claim on, as here the lands under this option, but on any property of the corporation that could be sold.

THE CHIEF JUSTICE: As to this decree on which there is no execution, that involves a sale, doesn't it?

MR. RIGBY: That involves a sale.

THE CHIEF JUSTICE: What is the necessity for a receiver there?

MR. RIGBY: Well, I was going to say, the other class, then, is t[illegible] *fourth class*, where the only provision in the Puerto R[illegible] statutes is that the appointment of a receiver in the case of forfeiture is provided. Now, that receiver, as we see it, he has the same powers and all the powers that a receiver would have if appointed to displace the liquidating trustees, and that includes, of course, the disposition of the personal property under the direction of the court.

THE CHIEF JUSTICE: Now, on the other hand, if you should read Section 27 as authorizing the directors or trustees of this corporation to act as liquidating trustees, is there any occasion for the appointment of a receiver?

MR. RIGBY: As we see it, yes. That is, under paragraph 5 of this Section 182: "In all other cases where receivers have heretofore been appointed by the usages of courts of equity." Because of the abdication of their trust duties in the liquidation, if you consider them liquidating trustees.

THE CHIEF JUSTICE: Well, if they had authority to liquidate this company, how do you find any authority in a court of equity to appoint a receiver?

MR. RIGBY: Because in liquidating it they were bound to consider the claims and the liabilities against it. Here they deliberately refused to consider one of the most important claims upon it, the claim of option by the state to determine whether to sell this land or to condemn it; and they tried to encumber the title so that when the state came to do it—

THE CHIEF JUSTICE: But they did not encumber the title, on your theory; they could not avoid the state's title.

MR. RIGBY: By transferring it to themselves completely, they would be then in position to sell or to do anything they wanted to with it. They just dis-owned any responsibility.

THE CHIEF JUSTICE: Are you undertaking to say they could give a title superior to the state?

MR. RIGBY: No; but they could make a purchaser go through a lot of proceedings to try to settle the title, and

put it into a difficult situation for the state to carry it out.

THE CHIEF JUSTICE: The state had no interest in the proceeds, did it?

MR. RIGBY: Well, yes and no. The state had an interest in having the thing done as effectively as it could be done; and has a perfect right to be able to go ahead with the carrying out of their option without having to get a lot of litigation involved in the claims of third parties who might claim that they had received title by purchase from this partnership.

MR. JUSTICE ROBERTS: Did I understand you to say that these trustees had done all that before these proceedings had come up?

MR. RIGBY: Yes.

MR. JUSTICE ROBERTS: Then what good is the receivership? You have to leave them, now.

MR. RIGBY: The motion was filed in 1938.

MR. JUSTICE ROBERTS: And all that was done after that?

MR. RIGBY: Yes; before the mandate of this Court could get back, they undertook to carry out that transfer to the trustees themselves.

MR. JUSTICE ROBERTS: Yes.

MR. RIGBY: And so far no third party has got into it, so that they are all subject to the court.

MR. JUSTICE ROBERTS: You can enjoin the company, and that is the purpose for the proceedings.

MR. RIGBY: But they put themselves in position to go ahead, and they were trying to dis-own all responsibility.

MR. JUSTICE REED: Is the validity of the transfer in the face of what they did, is that questioned?

MR. RIGBY: The Supreme Court of Puerto Rico holds, as part of that, that all of those acts were simply voided by what they did.

MR. JUSTICE REED: Did that go to the C.C.A.?

MR. RIGBY: That went to the C.C.A.

MR. JUSTICE REED: What did they do about it?

MR. RIGBY: They did not specifically pass upon it.

MR. JUSTICE REED: They don't mention the other part, but merely set aside the real estate?

MR. RIGBY: They upheld the validity of the option and that kind of thing. They did not specifically say that that transfer was void as established by the option.

THE CHIEF JUSTICE: Don't they recognize that the rights of the state under this decree could not be voided by any such action?

MR. RIGBY: Apparently they do, because they uphold the validity of the option, which goes to the same thing.

THE CHIEF JUSTICE: And if they are right about it, and the only purpose of this proceeding is to instruct the trustees, I don't quite see how the state has been hurt.

MR. RIGBY: Well, we cannot think that the state is not hurt when individuals have undertaken to say that they have a right to transfer all that property to themselves, apparently free and clear, and we would have to go back and have further litigation to get the thing back.

MR. JUSTICE REED: Why would you be interested in it any further if it passed to other parties? Why would the state be interested in it?

MR. RIGBY: Of course they keep the 12,000 acres just the same in the hands of the partnership, instead of in the hands of a corporation, and undertake to carry on the property just the same as it was before. In effect, they destroy any practical benefit to Puerto Rico in the program of dividing up the property.

MR. JUSTICE REED: Do you claim there is any prohibition against partnership ownership?

MR. RIGBY: There was not at that time, no; but there was, as we see it, when it was resorted to as a way to avoid the normal effect of the forfeiture decree. Otherwise, there would not have been.

Argument of Henri Brown, Esq., on Behalf of Respondent, Rubert Hermanos, Inc., *et al.*

MR. BROWN: May it please the Court, perhaps I may be permitted to say at the outset that this is a matter of considerable importance to Puerto Rico, the decision of the Court upon this writ. There are pending before the Supreme Court of Puerto Rico at present, I think, something like nine or ten cases of *quo warranto* proceedings that were instituted, most of them, early in 1936. This is the only case that has gone to judgment, so far.

This proceeding was instituted under an amendment to the *quo warranto* law of Puerto Rico, which was enacted in 1935, and is referred to as Act No. 47 of the special session of that year. It was designed to prevent, or rather to enforce the provision of the joint resolution of Congress that no corporation authorized to engage in agriculture should be permitted to own or control more than 500 acres of land.

It changed the existing *quo warranto* law very materially. The old *quo warranto* law was the modern conception of *quo warranto* law and merely provided for the forfeiture of the franchise, the imposition of a fine, and invested the court with discretion as to whether the franchise would be forfeited or whether it would impose both a fine and forfeiture or either one.

Now, practically all of the respondent corporations objected to this law in the lower court on the ground and asserting it was invalid. It must be remembered that the jurisdiction of the Supreme Court rested upon that law. It was the first time the Supreme Court of Puerto Rico had been given jurisdiction of *quo warranto* proceedings.

The attack was made upon two grounds, one of which was disposed of in this Court in the former appeal on this case. That ground was that the Legislature had attempted to amend a law of Congress and to impose penalties for viola-

tion of a law of Congress. The second ground was that the penalties provided by this law were both ex post facto and violative of the due process clause of the Constitution of of the United States and of the Organic Act of Puerto Rico.

Now, as I will have occasion to refer to the provisions of Act. No. 47 several times during the course of this argument, I would like to be permitted to read Section 2 of Act No. 47, which is copied at pages 15 and 16 of my brief. It reads:

> "Whenever, in the opinion of the court, it is satisfactorily established that the corporation or corporations have performed acts or exercised rights not conferred by law, or in violation of the express provisions thereof, the judgment entered shall decree the dissolution of the defendant if it be a domestic corporation, the prohibition to continue to do business in the country if it be a foreign corporation, the nullity of all acts and contracts realized by the defendant corporation or entity; and in addition, said judgment shall decree the cancellation of every entry or registration made by the said corporations in the public registeries of Puerto Rico; and when the decree of nullity affects real property and The People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property."

Now, these penalties of course appropriated and reversed the old common law rule. The contracts and acts of the corporation being annulled, and all of the entries in the registers of property and titles being cancelled, the result naturally would be that the only title left outstanding would be in the grantors of the corporation. Those contracts being annulled, no suit could be brought against the corporation, so that the debts to and from the corporation would be cancelled. And as the corporation could no longer hold property, being dead, quite likely its personal property would escheat to the state under the provisions as to escheat in the case of deceased persons.

Now, in each of these cases one of the grounds of attack on the statute was that the provisions were invalid and violative of Constitutional guaranties. It was further asserted that they were designed, because of their severity, to close access to the courts.

The only opinion in which the Supreme Court of Puerto Rico disposed of this question was in the Hart (?) Sugar case, in which I was of counsel and in which I argued. The Supreme Court passed upon the first objection, and held, and in that respect was sustained by this Court, that the legislation was within the powers of the Puerto Rican Legislature. It declined to pass upon the question as to the validity of the penalties, although we had insisted that if these penalties were invalid and if they formed a substantial part of the law and were not separable, it vitiated the whole act.

This Court sustained the Supreme Court of Puerto Rico, holding that this act was within the powers, the legislative powers devolved upon the Legislature by the Organic Act. Neither this Court, nor the Circuit Court of Appeals, nor the Supreme Court of Puerto Rico passed upon these penalty clauses.

Now, of course in the judgment made in this case, although these penalties are mandatory under this provision, under this Section 2 the law says they shall impose this as a part of the judgment, they did not do it. There has never been any declaration by the court, any court, as to the meaning of that part of the act and what its possible effect may be in any pending case.

MR. JUSTICE FRANKFURTER: May I interrupt you there? I take it there is no question as to the effect of this order?

MR. BROWN: I am not sure. I hope so, but I am not at all sure of it.

MR. JUSTICE FRANKFURTER: If not, then it would not make any difference what we did with it.

MR. BROWN: After this Court had affirmed the judgment of the Supreme Court of Puerto Rico, the corporation was dead and it was necessary to take some action immedi-

ately. We believe that under the Corporation Law of Puerto Rico the directors were the trustees and had power to liquidate the corporation.

The grinding season was then at its peak and the mill was operating and cane was being cut and ground. It was necessary to take some action immediately, and of course the corporation could not continue doing the business it had been engaged in. It would have been guilty of contempt of court and liable to summary action by the court had it continued to engage in business. The directors as the trustees were able to satisfy the obligations, the outstanding debts of the corporation, and it was felt that the proper thing, the wise thing to do was to turn this property over to the very persons that were entitled to it under the law, namely, its stockholders.

At this point perhaps I may anticipate a bit a subsequent point in our discussion—

MR. JUSTICE REED: Is the order that was entered and which was affirmed here in the transcript of the record; the order of the trial court of Puerto Rico?

MR. BROWN: You mean, appointing the receiver?

MR. JUSTICE REED: No; the old order that was here before?

MR. BROWN: No; it is only referred to in the briefs and the record. It is found—does Your Honor mean the judgment of the Supreme Court of Puerto Rico?

MR. JUSTICE REED: No.

MR. BROWN: The opinion of this Court reversing the Circuit Court of Appeals is found in 309 U. S., 543.

Mr. JUSTICE REED: Yes.

MR. BROWN: At page 40 of our brief we quote from Stearns Coal and Lumber Co. versus Van Winkle, that cites the doctrine declared by this Court in Pewabic Mining Co. versus Mason. It says:

> "The Pewabic Case recognized the right of stockholders to agree among themselves upon the disposition and transfer of the assets.

"The relations of stockholders in an expired corporation are 'analogous to the relations of partners.' Mason v. Pewabic Mining Co., 66 Fed. 391; * * * Opinion of the Justices, supra, 66 N. H. 639. The rule by which partnership real estate is regarded in equity as personalty is merely for the purpose of subjecting it to the payment of debts and the adjustment of balances between partners (Riddle v. Whitehill, 135 U. S. 635); but where there are no debts or the debts have all been paid, the partners have the right to personally dispose of or divide the lands. * * *

"Statutes for winding up the affairs of dissolved corporations are 'embodiments of equitable doctrines, and afford legal remedy where before there was none.'"

And it goes on to state:

"Had the officers of the Oil Well Company taken the statutory proceedings for liquidation of the affairs of the corporation, it would, we think, have been entirely competent, after the payment of debts or after ascertainment that there were none, for the stockholders to divide or dispose of the real estate on the basis of legal ownership as tenants in common."

THE CHIEF JUSTICE: I suppose there is no question about the general rule that when a corporation liquidates its operations that its stockholders are authorized to dispose of its assets. But the difficulty is here we have some statutes and your opponent says that this statute which controls all that happens when a corporation is dissolved does not permit that in this kind of a statute. Haven't we got to examine those statutes to find out what they mean?

MR. BROWN: Yes; I am coming to that, Your Honor.

THE CHIEF JUSTICE: Well, that is the case, isn't it?

MR. BROWN: Yes.

Now, the argument really divides into two parts, and perhaps the first part is more or less non-essential. The first is whether the Supreme Court of Puerto Rico had any power to appoint a receiver in this case; and the second is whether they had power to grant the kind of receivership that it did grant.

The motion for the appointment of a receiver is found at

pages 3 and 4 of our brief. It is found also at pages 16 and 17 of the record. It is quite short, and reads:

> "1. This Honorable Court has recently rendered judgment in the above entitled case (1) ordering the dissolution of the respondent corporation and (2) decreeing the forfeiture and cancellation of the license of the respondent corporation.
>
> "2. Such dissolution and disposition of the property of the respondent shall be entrusted to a receiver. In view of the foregoing and pursuant to the provisions of subdivisions 4 and 5 of Section 182 of the Code of Civil Procedure in force, the People of Puerto Rico prays this Honorable Court to make an order for the appointment of a receiver in accordance with law."

Now, the respondent answered that motion by stating that—their answer appears on pages 21 and 22 of the transcript of record—that they had paid all the debts; that they had sent a certified copy of the decree forfeiting the charter of the corporation to the Executive Secretary's office of Puerto Rico, asking him to note the decree and the dissolution of the corporation; that it had paid all the debts and that it had transfrered the properties to its stockholders.

I might mention, in passing, that my friend Colonel Rigby is in error when he states that the stockholders and the directors of this corporation, in asking and petitioning the Secretary's Office to note the decree of forfeiture and dissolution were acting under the statute as to the voluntary dissolution of corporations. We conceive that the dissolution was effected by the decree of forfeiture itself, and we felt that it should be entered and note should be taken of it in the Secretary's Office. There was no idea of compliance with or activity under the provisions of the statute providing for voluntary dissolution. We could not have done so had we so desired.

Now, the only question presented by this motion was as to whether it was necessary and whether the court had power to appoint a receiver, by reason of the fact that the corporation

had been dissolved by a decree of forfeiture. It stipulated that this question should be argued by brief.

In the brief of the government, however, a new ground was stated, as appears at pages 25 and 26 of the record, in which they said:

> "The principal objective of the motion for the appointment of a receiver now under discussion is the preservation of the status quo (until the proceeding is terminated) with regard to the lands which defendant possesses in excess of 500 acres."

And on page 26 it discloses something of the theory and the ultimate intention of the government:

> "It is not difficult to determine the intention of the legislator in this respect. Once the dissolution of the corporation is decreed by judgment in a quo warranto proceeding on the ground that it has been guilty of violating the 500 acre law, it was the legislator's intention that the government should retain a certain degree of control over the excess lands in order that its future distribution should comply with the fundamental spirit of the agrarian law—distribution among many farmers—and that said lands should not fall again into the same or a few hands."

The respondent objected that this new ground was not properly suggested and had not been presented by the motion, but attempted to meet it, nevertheless.

Now the court, upon this motion to appoint a receiver to liquidate the corporation, proceeded to appoint a receiver to operate the business of the corporation.

There is not one word about liquidation contained in the order appointing the receiver. The Circuit Court of Appeals makes mention of the great difference between what was asked for and what the court ordered.

MR. JUSTICE REED: What have you to say about paragraph 7 on page 129 of the record, with regard to the action to be taken by the receiver?

MR. BROWN: On page 129?

MR. JUSTICE REED: Yes. Is that section in effect?

MR. BROWN: Well, Section 7 says that the receiver, if the People of Puerto Rico shall elect to confiscate, shall take over this property.

MR. JUSTICE REED: Or to sell it.

MR. BROWN: Or to sell it, or transfer title to the People of Puerto Rico for the price fixed by the court, and in case they elect to have the property sold at public auction then the receiver shall proceed to sell in accordance with the plan which would be submitted to the previous approval of the court.

MR. JUSTICE REED: Well, I understand you to say there was nothing in the order which indicated anything further than operation?

MR. BROWN: In that respect I was mistaken. What I intended to say was that there was nothing in the order as to the liquidating or winding up of the affairs of the corporation.

MR. JUSTICE JACKSON: If there was no power under the law to appoint a receiver of the properties on the forfeiture of the charter, there could be a grab, immediately.

MR. BROWN: My contention is that immediately—

MR. JUSTICE JACKSON: There would be no power to save it from that grab.

MR. BROWN: My contention is, in the first place, that under the law the directors of the corporation whose charter has been forfeited are made trustees in liquidation, with full powers to dispose of the property and to distribute the balance among the stockholders.

THE CHIEF JUSTICE: Well, now, should we consider that first, then, in this matter?

MR. BROWN: Very well, then, I will do so. Because I think, as Your Honor says, that the order rests upon the proper construction of that statute.

MR. JUSTICE FRANKFURTER: In connection with the answer you gave as to the statute, will you be good enough to take into account whether under the Puerto Rican

law your court had no power to appoint a receiver other than the liquidating directors in case a showing is made that the liquidating directors will act contrary to the interests or will not act in accordance with interests of all those who may have an ultimate interest in the matter?

MR. BROWN: If I may answer that first, it is answered by Section 30 of the Corporation Law, which is found at page 13 of our brief.

MR. JUSTICE FRANKFURTER: Page 13?

MR. BROWN: Yes.

> "When any corporation shall be dissolved in any manner whatever, the district court having jurisdiction of the place where its principal office in the Island of Puerto Rico is situated, on application of any creditor or stockholder, may at any time, either continue the directors as trustee as aforesaid, or appoint one or more persons to be liquidators of such corporation to take charge of the assets and effects thereof, to collect the debts and property due and belonging to the corporation, with power to prosecute and defend in the name of the corporation or otherwise, all suits necessary or appropriate for the purposes aforesaid, or to appoint an agent or agents under them, or to do other acts that might be done by such corporation if in being that may be necessary for the final settlement of its unfinished business and the powers of such trustees or receivers may be continued so long as the courts shall think necessary for such purpose."

THE CHIEF JUSTICE: Your opponent says that is permissible, but they were not bound to do it, and said there would be good reasons why they should not do it.

MR. BROWN: In any event, if we are correct in our construction of Sections 27, 28, et seq. of the Corporation Law, as vesting in the directors all powers as trustees in dissolution, then I say that, whether the receiver can be appointed or not by the Supreme Court of Puerto Rico, he should only be appointed upon a showing that these trustees are incompetent or unable to perform their duties as such

trustees. And of course there was no such showing in this case.

MR. JUSTICE REED: That goes to saying that Section 182 (4) never authorizes it unless there is some showing of the impropriety of letting the directors wind up the corporation.

MR. BROWN: Yes.

MR. JUSTICE REED: And that is what the C.C.A. said below, was it not?

MR. BROWN: Yes; and that is in accordance with the construction placed upon this section by practically all of the Western courts. These sections are found in the codes of most of the Pacific States.

MR. JUSTICE REED: And against that we have to weigh the judgment of the Supreme Court of Puerto Rico in saying that was valid.

MR. BROWN: Yes.

THE CHIEF JUSTICE: And also some changes in phraseology which your opponent pressed here orally.

MR. BROWN: My opponent, Your Honor, was talking about the Corporation Law. Yes; he did make one reference to the difference in the California statute.

THE CHIEF JUSTICE: Now, you were talking about this Section 27 and what it meant.

MR. BROWN: I am.

THE CHIEF JUSTICE: Of course, if that has no application here, then there might have been a strong reason for the court's appointing a receiver. But, on the other hand, if it does apply, the argument, as I understand it, in the Court of Appeals below was that there was authority to appoint a receiver and it was within its discretion to appoint him because that statute authorized the liquidating of the corporation by its trustees.

MR. BROWN: Yes.

THE CHIEF JUSTICE: And I don't see how we are going to get anywhere with this case unless we get a little light on what Section 27 means.

MR. BROWN: I am about to attempt to tell Your Honor what I think it means, or what we think the authorities say that it means.

THE CHIEF JUSTICE: Well, there is an argument made that when it was transferred from California to Puerto Rico they left out certain words which indicate that in this kind of a proceeding the corporate officers, directors and trustees have no authority over the property.

MR. BROWN: Well, that brings me to my first point of difference with counsel for the petitioner. It has never been suggested, so far as I know, before it has been suggested here now in this argument, that this Corporation Law of Puerto Rico or these sections derive from California. They are quite different.

On the other hand, I think it has always been assumed in Puerto Rico, though not so stated by the court, by the Supreme Court of Puerto Rico, that these sections of the Corporation Law derive from the State of New Jersey, and that they are substantially identical with Sections 53, 54, 55 and following of the Laws of 1896 as found in the Compiled Statutes of New Jersey of 1910. Reference to that is found on page 21 of my brief.

An examination of those sections of the New Jersey statute will show, will demonstrate that of all the corporation statutes in the United States the only ones that are identical with these sections of the Puerto Rico Corporation Law are these sections of the general corporation law of New Jersey. The Virginia Code contains several identical sections and, although I have made no reference to it here, one of the sections of the corporation law of South Carolina is identical with Section 27, I think it is, of our code.

So, as I say, the first point of difference is that we are not construing a statute that has been derived from California, but a statute that is derived from New Jersey and of which the common understanding is it was derived from New Jersey.

THE CHIEF JUSTICE: Now, it does set out *quo warranto* proceedings for excessive property holdings.

MR. BROWN: I assume so. I am talking about the corporation law; not about *quo warranto*.

THE CHIEF JUSTICE: I know you are, but whatever the corporation law may mean in New Jersey, it has to be construed the way your opponent says, in this *quo warranto* proceeding, and he makes the point that the *quo warranto* or forfeiture proceeding was taken out of the corporate statute because it has a companion piece with the *quo warranto* law in it.

MR. BROWN: The *quo warranto* law was originally enacted and approved in the year 1902. This corporation law, as counsel says, had its inception, the corporation law, the act to establish private corporations, from which these sections are taken, was enacted as a new and independent statute in 1911 and was approved March 9th of that year.

The code, Section 182, to which reference is made by counsel, is Section 182 of the Code of Civil Procedure of Puerto Rico, which was adopted, enacted and approved in 1904, in March, 1904. And it is substantially identical with the provisions of the Code of Civil Procedure of California, and I think identical with the provisions of the Code of Civil Procedure of Montana.

MR. JUSTICE REED: What do the references to the California Code mean that are printed in the petitioner's brief?

MR. BROWN: Well, they mean—

MR. JUSTICE REED: Are they so provided for by some statute of Puerto Rico?

MR. BROWN: Yes; the statute provides for the printing of the several statutes of Puerto Rico, and requires that the person or persons in charge of the printing should put before each statute section its equivalent in the—

MR. JUSTICE REED: The source?

MR. BROWN: The statute from which it is derived; yes.

MR. JUSTICE REED: I understood you to say these were not derived from California?

MR. BROWN: I say the Code of Civil Procedure, Section 182, is derived from California.

MR. JUSTICE REED: Yes.

MR. BROWN: But we say the provisions of the corporation law are derived from New Jersey, and not in any sense from California.

MR. JUSTICE REED: I am sorry; I misunderstood you.

MR. BROWN: Now, as Your Honor has pointed out to counsel, Section 27 of the Corporation Law provides that all corporations, whether they expire through limitation contained in the articles of incorporation, or are annulled by the Legislature or otherwise dissolved, shall be continued. That is a provision for continuing the corporation pending liquidation.

Section 28 provides: "Upon the dissolution in any manner of a corporation, the directors shall be the trustees thereof pending the liquidation, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys," and so forth.

In Section 30, which I have already read, it is provided "When any corporation shall be dissolved in any manner whatever, the district court having jurisdiction of the place where its principal office in the Island of Porto Rico is situated," may at any time either continue the directors as trustees or appoint others.

Now these provisions have been construed by the court, and in general where the word "dissolution" in a statute of this character is unqualified, the courts have held that it included dissolution for any reason whatsoever, brought about by any reason whatsoever.

Where the term "dissolution" is qualified, as it is in this statute, and as it is in the New Jersey statute, the courts have held without exception that it includes and covers dissolution resulting from a forfeiture of the corporate franchise.

MR. JUSTICE ROBERTS: Are all those cases in your brief?

MR. BROWN: I will point them out to Your Honor. They are found at page 28 of our brief. The first two are New Jersey cases; Browne vs. Hammet is a South Carolina case, and Mieyr vs. Federal Surety Co. is an Arizona case.

The broad statement is made in an extensive notation found at 42 A. L. R. that the weight of authority is that where the term "dissolution" is unqualified that, with the exception of Texas, the courts have held that it covers dissolution effected by the forfeiture of the corporate charter; and that where it is qualified, as it is by the language contained in our statute, or similar language, it covers and includes every kind of dissolution. A dissolution, of course, can be effected in many different ways.

If it were true, as Colonel Rigby suggests, that the dissolution referred to was only the voluntary dissolution which is provided for in the law, then the provision or the statement that the corporate life is continued where the corporation expires through limitation or through being annulled by the Legislature or otherwise dissolved, is meaningless; and the statement that upon dissolution in any manner of the corporation, that is likewise meaningless.

Now, as I say, under the rules of construction laid down by the Civil Code of Puerto Rico, which were practically identical with the rules of construction or statutory construction in common law jurisdictions, the Supreme Court of Puerto Rico was not at liberty to disregard these words; those words qualifying the term "dissolution".

As this Court has said, and we cite the case of United States versus Standard Brewery:

> "Nothing is better settled than that, in the construction of a law, its meaning must first be sought in the language employed. If that be plain, it is the duty of the courts to enforce the law as written, provided it be within the constitutional authority of the legislative body which passed it. * * *

"It is elementary that all of the words used in a legislative act are to be given force and meaning (Washington Market Co. vs. Hoffman, 101 U.S., 112); and of course the qualifying words 'other intoxicating' in this act cannot be rejected. It is not to be assumed that Congress had no purpose in inserting them, or that it did so without intending that they should be given due force and effect."

Now, counsel cite Gibbs versus Morgan and State versus Second Judicial Circuit in their brief. But those cases have to do with the code of civil procedure, rather than with the corporation law of that state, and I cannot see that they are very pertinent. In each case the suit was brought by a stockholder against the corporation and its directors, who were alleged to be using their power as majority stockholders and directors to defraud the minority stockholders. And in a suit pending in each State a receiver was appointed.

If counsel had meant to infer that the Montana court discusses but does not conform to the general doctrine as to directors being trustees in liquidation, it is shown to be erroneous by Ferrell versus Evans, 25 Montana, from which we quote at the bottom of page 29. The court there says:

"Section 561 of the Civil Code constitutes the directors of a corporation dissolved for any reason trustees for the creditors and shareholders with full power to wind up its affairs, unless some other person be appointed for that purpose. No exception is made in case of insolvency. The intention of the legislature seems to have been to provide the most inexpensive and expeditious way for the administration of the affairs of a defunct corporation by confiding them to the hands of those who are best acquainted with them, and have a direct personal interest in preserving and appropriating the assets to their legitimate purposes, subject to an accounting or removal by a court of equity at the instance of a shareholder or a creditor whose rights are jeopardized or betrayed."

MR. JUSTICE JACKSON: Now, if these directors had

been acting as trustees and took over on dissolution, and the court found that they had an interest adverse to the policy of the act, for which the corporation had been dissolved, as manifested by the transfer of the properties to themselves and their stockholders; is it not in the court to supersede that with a disinterested proceeding?

MR. BROWN: I think perhaps that might have been done, had there been any such showing. But, in the first place, there was no mention made of it before the Supreme Court, and the Supreme Court did not base its appointment of a receiver upon the fact that they had transferred the property to their own stockholders.

MR. JUSTICE JACKSON: The thought came to me in connection with the court pointing out the policy of the act; didn't it do that?

MR. BROWN: It started out with the premise that the corporation was dead by reason of the forfeiture and that it could not buy any property and could not hold any property and had no further power to act in any respect; that the corporation law did not provide either for a continuation of the corporate life or, as the Supreme Court construed it, did not make the directors the trustees in liquidation. Therefore, there was nobody to liquidate and to wind up the affairs of the corporation. That was the premise, the first premise of the Supreme Court; and that we think was the basis of the order, and that, we think, was clearly erroneous.

Going back to the proper construction of Section 27 and the following sections, Puerto Rico was, of course, a civil law territory. Now, before Puerto Rico became a part of the United States, before it was taken over by the United States, the "trust fund" principle, the "trust fund" doctrine had been firmly established in all state and federal courts. Whether that "trust fund" doctrine would have been imported into Puerto Rico of its own force or of its own virtue, may be debatable. We say that the adoption of this statute, which was a type of statute adopted throughout the vari-

ous States of the United States, was for the recognized purpose of putting into statutory law the "trust fund" principle, the "trust fund" doctrine, and abrogating the harsh rules of the common law as to the reverting of real estate, the escheat of personal property and the cancellation of debts. That it was adopted, and similar statutes have been adopted throughout the various States, for that recognized purpose; that when this law and these sections were enacted in Puerto Rico, it is fairly to be assumed that they were brought there for the very purpose that the same statutes or similar statutes had been enacted for in the several States of the Union.

Now this Court in Philippine Sugar Co. versus Philippines, 247 U. S., had occasion to examine and construe Section 285 of the Civil Code of the Philippines. This Court said—this is page 31 of the brief:

> "It is well settled that courts of equity will reform a written contract, where, owing to mutual mistake, the language used therein did not fully or accurately express the agreement and intention of the parties. The fact that interpretation or construction of a contract presents a question of law, and that, therefore, the mistake was one of law, is not a bar to granting relief. • • • This rule of equity was adopted in the Philippine Code without restriction; and the relief is afforded, under appropriate pleadings, without resort to an independent suit for reformation of the contract. The language of Sec. 285 is clearly broad enough to include relief for such mistakes of law; and the earlier decisions of the supreme court of the Philippine Islands, to which that court refers in its opinion, are not inconsistent with this conclusion. • • •
>
> "It is also urged that, since the construction of Section 285 is a matter of purely local concern, we should not disturb the decision of the supreme court of the Philippine Islands. This court is always disposed to accept the construction which the highest court of a territory or possession has placed upon a local statute. • • • But that disposition may not be yielded to

where the lower court has clearly erred. * * * Here, the construction adopted was rested upon a clearly erroneous assumption as to an established rule of equity. The supreme court erred in refusing to consider the evidence of mutual mistake."

We say here that the decision of the Supreme Court was rested upon a clearly erroneous assumption as to the established rule of equity which was enacted into and adopted in Puerto Rico by these provisions of the Corporation Law that we are discussing.

MR. JUSTICE REED: Mr. Brown, do you contend that there is any difference in the power of the court of Puerto Rico to make this appointment as related to real estate and as related to personal property?

MR. BROWN: Yes, Your Honor. On the question as to the character of the appointment that was actually made, as apart from its general power to appoint a receiver, we contend that the appointment was invalid, among other reasons, because it turned over to the receiver all of the property of this corporation. It turned over not only the real property, legally held or legally acquired, but it turned over its moneys.

MR. JUSTICE REED: All its property.

MR. BROWN: Everything.

MR. JUSTICE REED: Now, there had been a judgment of dissolution against the corporation?

MR. BROWN: There had been a judgment of dissolution against the corporation.

MR. JUSTICE REED: Is it the theory of the court that it was assisting in this final liquidation after the judgment of dissolution?

MR. BROWN: Well, the theory of the court seems to be that, first, there was nobody else, there was no officer or other person authorized by law to care for and preserve this property or to liquidate its affairs; that seems to be the first premise. Then they say, it is true, later on, that anyway the

trustees in liquidation could not liquidate this property until after the People of Puerto Rico had exercised their option.

MR. JUSTICE REED: We must assume here, must we not, that the judgment by which the corporation was directed to be dissolved is to be considered as valid, now?

MR. BROWN: Oh, yes; there is no question about that. I might point out that that judgment directed the immediate dissolution and winding up of the affairs of the corporation; and of course this present order delays and postpones indefinitely that liquidation and winding up.

Had the appointment of a receiver been proper or necessary in any case, it would have been perfectly feasible for the court to have appointed a receiver for the lands, charged with their preservation pending such time as the People of Puerto Rico should have exercised their option. It has never been argued and never been contended, in the lower court ol elsewhere so far as I know, that it was not a legitimate purpose and a legal act for the corporation to construct a sugar factory or purchase a sugar factory, to construct its sugar railroads or its docks or whatever was connected with the manufacturing end of the sugar business, or to negotiate or to make contracts with third parties for the purchase of sugar cane or for the grinding of sugar cane. All of those things are lawful acts of the corporation. They were not prohibited by any law, and the property that vested under the exercise of those powers, the mills, the railroads and the personal property, are all protected, as I said, by the Constitutional guaranties. The stockholders, as the ultimate beneficiaries, cannot be divested of those properties under the guise of an operating receivership by the court, as it has attempted to do in this case.

MR. JUSTICE REED: What about condemnation?

MR. BROWN: Well, as I understand, the condemnation clause refers to lands unlawfully held. Of course, the People of Puerto Rico can condemn anything, provided it be for a public purpose and provided that they make proper pro-

vision for the payment of a fair compensation, and furthermore, if the payment is made in advance, as the Organic Act requires.

MR. JUSTICE JACKSON: Is it your contention that the transfer of the property by dissolution defeats the power of the state to exercise its option?

MR. BROWN: Of course not. The stockholders, as the owners and as presently holding the title of these properties, certainly could not attack, they would not be heard to attack the title of the People of Puerto Rico if the court determined that these properties should be sold at public auction. The very purpose of putting this property in the possession of the stockholders, to whom it belonged, was to avoid any question about the fact that these properties had been sold to their persons. Some question might have been raised. They might have raised the same argument, although I don't see how they could, because *lis pendens* was adequate and all of this property was on file with the Secretary.

MR. JUSTICE JACKSON: The purchaser was with notice.

MR. BROWN. The purchaser was with notice. Furthermore, if the People of Puerto Rico had wanted to, if their only purpose had been the protection of this option, and if they did not deem *lis pendens* adequate, they could have done, as in other cases has happened, brought an injunction against the property.

Well, now, as we conceive it, the only property involved in this litigation, so far as the People of Puerto Rico are concerned, are the properties, are the lands that it was asserted had been illegally acquired.

THE CHIEF JUSTICE: If the government decided to sell the land, how would they proceed; would that be before a receiver, or before a special master?

MR. BROWN: Well, now, we have been attempting to find out, not only this corporation but a good many others, what the ultimate intention of the government was and what could be done under the *quo warranto* law. To that

end we have had numerous conferences, and we have not been able to find out. That is the reason these suits are pending.

THE CHIEF JUSTICE: Could they name a receiver for that?

MR. BROWN: I want to point out this because, while I do not think this amendment to the *quo warranto* law could in any wise affect the appointment of the receiver, because it must speak for the future, it does indicate what the government now intends shall be the procedure in the future, and it seems to me it provides what is very clearly an unconstitutional method.

This amendment is in the italicized section printed at page 16; it reads:

> "For the purpose of carrying out the provisions of this section, the Supreme Court is hereby empowered to appoint receivers who, in behalf and with the approval of the Supreme Court shall have exclusive charge of the liquidation and sale of the property of the corporation or corporations affected. In all cases the receivers shall give preference, in the acquisition of lands to the Land Authority of Puerto Rico, which shall have a legal preferential option for the purchase of said lands for the fair price fixed by the final judgment. The receivers thus appointed shall be bound to initiate the sale of lands within a period of not to exceed six (6) months from the date the receivership is established. The Land Authority shall have a preferential right to purchase said lands for the fair value thereof, within a period of not to exceed one year, during which time said lands cannot be sold to any other person or entity. Said period of one year may be extended for one year more, with the approval of the Governor. After this period or periods, the lands shall be sold at public auction and the Land Authority may bid at the auction sale held to dispose of such lands. The Authority shall be entitled to priority or preference in the purchase of such lands at the public auction in those cases where it may bid a price equal to that offered by the highest bidder. The edicts advertising the public sale shall so recite."

THE CHIEF JUSTICE: We will stop here.

(Whereupon, at 2 o'clock p.m. the Court took its usual recess until 2:30 o'clock p.m.)

AFTER RECESS

MR. BROWN: May I inquire, Your Honor, if I have any more time?

THE CHIEF JUSTICE: Well, sir, you have about twenty seconds.

MR. BROWN: We contend that the appointment of the receiver is without jurisdiction because it involves property not involved in litigation and because it authorizes the creation of litigation upon the property.

MR. RIGBY: May I be permitted to say just one word?

THE CHIEF JUSTICE: Your time has expired.

(Whereupon, at 2:31 o'clock p. m. the oral arguments in the above-entitled matter were concluded.)